IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6144 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PA ABRAHAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6144 of 1989

MR HH RAVAL for MR AK CLERK for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR SP SEN AGP for Respondents No. 1,2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 17/01/2002

ORAL JUDGEMENT

#. The petitioner was appointed as Assistant Agricultural Engineer on 22.9.1967 on the Class-III post

with the respondent-State Government. Later on he was promoted to the post of Agricultural Engineer Class-II on 5.2.1988. Thereafter, on 25.2.1988 (Annexure-H) he made representation to the respondent to give him deemed date of promotion from 28.8.1981, the day on which one Shri Makwana who was junior to him was promoted. However, by letter dated 6.4.1988 (Annexure-I) the petitioner was informed that he was punished in a departmental inquiry pending against him and, thereafter, in accordance with rules he has been given promotion, therefore, there is no question of granting him deemed date of promotion as prayed for. This decision of the respondents came to be challenged by the petitioner after more than 16 months by way of this petition and it is prayed that the respondents be directed to treat the petitioner as promoted to the post of Agricultural Engineer with effect from 17.9.1981 to grant him all consequential benefits of service. Alternatively it is prayed that the respondent authorities to be directed to treat the petitioner as promoted on the post of Agricultural Engineer with effect from 1.9.1987.

#. Learned counsel Shri Raval for the petitioner submitted that in 1981 the petitioner was wrongly not considered for promotion by the respondents. Relying upon the Government Resolution dated 23.9.1981 (Annexure-G) he submitted that no procedure of sealed cover was followed by the respondents. He submitted that once he is promoted in 1988 then he should have been given deemed date of promotion from 17.9.1981, the day on which the his immediate junior was promoted.

#. In my considered opinion there is no question of considering the case of the petitioner for giving deemed date of promotion with effect from 17.9.1981 because the petitioner was facing departmental inquiry for which he was subsequently punished. If, according to him, his immediate junior was promoted in 1981 then at that time he should have made the grievance but after the period of 7 years it would not be open to him to make any grievance merely because he has been subsequently promoted in 1988. In fact, I am really surprised that the person who has been found guilty and imposed penalty was promoted immediately by the State Government. Such persons ought not have been promoted to the higher post. Be that as it may. I am of the considered opinion that merely because he was later on promoted in 1988 that does not mean that he is entitled to get deemed date of promotion.

It may be stated that when he was promoted on 2.2.1988 to the post of Agricultural Engineer, he

accepted the promotion without any fuss but soon thereafter he applied for deemed date of promotion on 25.2.1988 (Annexure-H) and when his request was turned down on 6.4.1988 (Annexure-I) he waited for nearly 16 months and then only he filed this petition. There is no explanation whatsoever for such a gross delay. Thus, on the ground of delay also the petition is required to be dismissed. In view of the above discussion, this petition fails and is dismissed. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

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